CF0000064125

(2)

IN THE HIGH COURT OF JUDICATURE M.P. AT JABALPUR

CRIMINAL APPEAL NO. 1701 ... 2000 Division Bench (Criminal)

APPELIANT IN JAIL :- Parsadi Ram son of Bihauram
aged 29 yrs, R/o Birejhar
Thana Mohla, Distt Rajnadgaon
presently at Dondi Thana Dondi
Distt Durg M.P.

(6956)

Filed on 5/7/2000
By Shri R.K. Kharve Advocate

B.A.R

- : versus :-

RESPONDENT : State of M.P.

S.T. No. 91/2000.

CRIMINAL APPEAL U/S 378 (2) CODE OF CRIMINAL PROCEDURE

(12)

A.F.R.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 1701/00 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH

HON'BLE MR. L.C. BHADOO &

HON'BLE MR. DHIRENDRA MISHRA, JJ.

16-11-2006

Shri D.R. Sharma, Sr. Advocate with Shri B.D. Badgaiyya, Advocate, for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral Judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 6th May 2000 passed by Additional Sessions Judge, Balod, District Durg in S.T. No.91/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that PW-1 Banauram, father of the deceased and father-in-law of the accused lodged a report in the Police Station Dondi to the effect that 'today at about 4 p.m. he was at his residence. Son of the accused came and informed him that his father is attacking his mother with an axe, on this, he went to the house of the accused. He saw that his daughter Sushila was lying, blood was

P.T.O.

(13)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A./1701/00 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

oozing out of the injuries of head, therefore, he took Sushila to the hospital.

Receiving this report Station House Officer, Police Station registered F.I.R. (Ex.-P/1) for the commission of offence under Section 307 of the I.P.C., left for the scene of occurrence from where weapon of offence i.e. axe was taken into possession under Ex.-P/3. Memorandum Ex.-P/2 was given by the accused. Plain soil and blood stained soil was taken into possession under Ex.-P/4. Postmortem on the body of the deceased was conducted by Dr. V.K. Sao, who prepared postmortem report Ex.-P/6. The injuries on the body of Sushila were examined by Dr. L.L. Markande, who prepared injury report Ex.-P/7. Inquest (Ex.-P/11) of the body of Sushila was prepared by the Investigating Officer after giving notice (Ex.-P/10) to the Panchas.

After completion of the investigation, charge sheet was filed against the accused in the court of Judicial Magistrate, 1st Class, Balod, who in turn committed the case to the Sessions Judge, Durg, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing

-3-

P.T.O.

(14)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A...1701/00... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

against him in the prosecution evidence. In the last, he has stated that he is innocent and has been falsely implicated in the Crime.

Learned Additional Sessions Judge after hearing respective counsel and perusal of the record convicted and sentenced the accused as mentioned aforesaid.

We have heard learned counsel for the parties.

Shri Sharma has not disputed homicidal death of Sushila. PW-4 Dr. V.K. Sao, who conducted postmortem on the body of the deceased, has categorically stated that there was incised wound on the parietal region in the size of 3", another incised wound was on the scapular region in the size of 1.5", injuries were ante-mortem in nature, there was fracture of temporal and parietal bone, brain material came out, cause of death was shock and haemorrhage on account of head injury. The death was homicidal in nature. His report is Ex.-P/6. Therefore, in view of the above medical evidence, it is established that the death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, learned Senior Advocate argued that there is no ocular evidence. The accused has been convicted merely on the evidence of PW-3 Bisambhar, who has stated that he saw the accused while he was running in the street. No definite conclusion can be drawn

-4-

P.T.O.

(15)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..CrA..1701/20... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

from the above fact without corroboration by any other evidence to the effect that the accused was author of the crime in question. He further argued that recovery of the axe which is said to be based on the memorandum of the accused, is not correct as the axe in question was seized from the place of occurrence where it was lying, therefore, it cannot be said that the axe was recovered at the instance of the accused.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate the argument advanced by respective counsel, we have perused the evidence. PW-3 Bisambhar has stated that at about 4 p.m. he saw the accused when he was running in the street. He immediately went to the house of the accused, he saw that his son was crying, wife of the accused was lying, there was injury on the head and blood was oozing out of it. The child was of 6-7 years old. He disclosed that his father has attacked his mother with an axe, thereafter he went to the house of Banau and informed him. PW-1 Banauram, father of the deceased and father-in-law of the accused, has stated that on the fateful day at about 4 p.m. son of the deceased came and informed him that his father has attacked his mother with an axe and ran away. On this, he went to the house of the accused and saw that his daughter Sushila was lying, blood was oozing out of head. He took her to the hospital and lodged the report Ex.-P/1. The house of PW-3 Bisambhar,

-5-

P.T.O.

(16)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA/1701/00 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

as per site plan (Ex.-P/16) prepared by Patwari, is adjacent to the house of the accused. He saw the accused while he was running in the street which created doubt in his mind, he immediately went to the house of the accused where he saw that Sushila was lying in injured condition and blood was oozing out of her head. Son of the accused, child witness, disclosed him that his father has attacked his mother with an axe. The accused in reply to the evidence of this witness has stated that it is incorrect. In the cross-examination of this witness, no circumstance has been brought on record to show that this witness, in fact, had any animosity against the accused and that is why he had deposed against him in order to implicate him in a false case. Therefore, there is no reason to disbelieve the evidence of this witness to the effect that he saw the accused while he was running in the street. Moreover, being a neighbourer seeing the accused running in the street by this witness was but natural. He immediately went to the house of accused and saw that Sushila was lying in injured condition. Evidence of this witness to this effect finds support from the fact that PW-1 Banauram was immediately informed who also came on the scene and saw that his daughter was lying in injured condition and he took her to the hospital. Therefore, false explanation has been given by the accused that this witness did not saw him running. In his statement he has not explained that how he was ignorant about the murder of his wife as murder was committed in his

—6—

P.T.O.

(17)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..CRA..1701/07... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

house. Therefore, it was his duty to explain the circumstances in which crime was committed and he was not involved in it.

As has been held in the recent judgment of the Hon'ble Apex Court in the matter of **Trimukh Maroti Kirkan Vs. State of Maharashtra** reported in **2006 AIR SCW 5300** that "*it does not mean that a crime committed in secrecy or inside the house should go unpunished. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as notice above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The*

—7—

(18)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CRA/1701/09.... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. In case of no explanation or false explanation it would an additoinal link in chain of circumstances".

The conduct of accused that just after commission of crime he fled the scene of occurrence is admissible under Section 8 of the Evidence Act. He has not explained as to why he ran away from his house, how the crime in question was committed in his house, therefore, it is established that he was the author of crime in question.

The evidence of PW-1 Banauram and PW-3 Bisambhar to the effect that they were immediately informed by the son of the accused aged about 6-7 years that his mother was attacked by his father with an axe is relevant as per Section 6 of the Evidence Act even if he has not been examined by the prosecution. Section 6 envisages that 'facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant'. The disclosure made by the son of the accused immediately after the incident to PW-3 Bisambhar and to his grandfather PW-1 Banauram was so short from the fact of the incident that it formed part of the same transaction and same is admissible under Section 6 of the Evidence Act. The disclosure was voluntary and was not on enquiry by PW-1 and PW-3. The disclosure

P.T.O.

(19)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.1701/00... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

by the child to PW-1 and PW-3 is admissible as res-gestae. Res-gestae is an exception to hearsay rule. In order to hold the statement res-gestae, it has to be remembered that the statement should be reasonable, contemporaneous and also spontaneous. Statement made in response to queries has to be excluded. For this we are fortified in our view by the judgment of the Apex Court in the matter of **Sawal Das V. State of Bihar** reported in **AIR 1974 SUPREME COURT 778**. In that case, accused Sawal Das, his father and mother were charged with the murder of his wife. The deceased was pushed inside the room. She raised cries "Bachao Bachao" inside the room and her children raised the cries uttering the words that their mother was either being killed or had been killed. The said part of cries raised by the children were heard by a witness who deposed before the Court that he heard cries of the children uttering the words that their mother was either being killed or had been killed. The said evidence of third person was held to be admissible under Section 6 of the Indian Evidence Act even though that child witness was not examined by the prosecution in support of the prosecution case.

In the present case, as per the evidence of PW-3 Bisambhar, when he saw the accused running away in the street, being a neighbourer, he immediately went to the house of the accused, son of the deceased aged about 6-7 years voluntarily disclosed him that his father has attacked his wife with an axe, therefore, in view of the above judgment of the Apex

P.T.O.

(20)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A./1701/00... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Court and also in view of Section 6 of the Evidence Act, same is admissible under Section 6 of the Evidence Act. Therefore, the fact that the accused was seen running away from the house in the street by PW-3 Bisambhar, he immediately went to the house of the accused and saw that his wife was lying in injured condition, son of the accused disclosed that his father has attacked his mother with an axe, the above circumstances conclusively establishes that the accused was author of the crime in question and only irresistible conclusion can be drawn that the accused was the author of the crime in question and there was no possibility of coming any third person in between committing the crime in question. As far as recovery of the axe is concerned, as the axe was recovered from the place of occurrence, therefore, it cannot be said that the axe was recovered at the instance of the accused. For the foregoing reasons, we are of the opinion that judgment of the trial Court convicting the accused for the commission of murder of Sushila does not suffer from any illegality or infirmity. The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**
Barve		

P.T.O.